BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

F I L E D
09-17-07
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Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.	Investigation 07-01-022 (Filed January 11, 2007)
In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.	Application 06-09-006 (Filed September 6, 2006)
Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates	Application 06-10-026 (Filed October 23, 2006
Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.	Application 06-11-009 (Filed November 20, 2006)
Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.	Application 06-11-010 (Filed November 22, 2006)
Application of San Jose Water Company (U 168 W) for an Order Approving its Proposal to Implement the Objectives of the Water Action Plan	Application 07-03-019 (Filed March 19, 2007)

REPLY BRIEF OF THE

CONSUMER FEDERATION OF CALIFORNIA

Alexis K. Wodtke
Staff Attorney

Richard Holober
Executive Director

Consumer Federation Of California
520 S. El Camino Real, Suite 340
San Mateo, CA 94402
Phone: 650-375-7840
Fax: 650-343-1238
E-mail: lex@consumercal.org

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I. INTRODUCTION

At the close of hearing on August 2, 2007, a schedule for the filing of briefs in Phase IA was established. Opening Briefs were filed August 27, pursuant to that schedule. Although Opening Briefs were to include briefing in opposition to the conservation rate design settlements, a brief was filed by California Water Service Company ("Cal Water" or "CWS") supporting adoption of the settlement and charging the Consumer Federation of California ("CFC") with not understanding the settlement, disputing CFC recommendations, and attacking the qualifications of CFC's witness. This Reply Brief responds to Cal Water's brief.

II. ARGUMENT

A. The Amended Settlement Does Not Satisfy Commission Requirements.

California Water claims "[t]he Amended Settlement fulfills the criteria that the Commission requires for approval of such settlements." (Br. at 54) It does not. The settlement is not "reasonable in light of the whole record, consistent with law, and in the public interest," as required by Rule 12.1(d).

1. The Settlement is not consistent with law – rates proposed in the settlement are discriminatory.

The Settlement contains no justification for the discrimination between residential and commercial customers. Cal Water was not ordered, like Suburban, to file an increasing block rate only for residential customers and, in fact, had agreed to file an increasing block rate for "all customer classes." *Application of California Water Service Company*, D.06-08-011 (Aug. 24, 2006) at 17. There is a need for inclining block rates for all customer classes, not just residential customers. The consumption of water by

non-residential customers in some districts is greater than the water consumption of residential customers, as shown by the following figures in the Settlement:

	Residential ccf	Non-Residential ccf
Bakersfield [1]	6,538,043	9,319,940
East L.A.[2]	3,956,756	4,269,770
Chico[3]	2,858,956	4,260739
Visalia[4]	3,678,841	3,784,847

The WRAM proposed by Cal Water further discriminates against residential customers. Cal Water offers no legal or factual justification for failing to segregate net losses or gains of residential customers in the combined WRAM and MCBA, from those associated with non-residential customers. One class may subsidize the other under the Cal Water WRAM.

2. The Settlement does not serve the public interest – it does not address the need of large families for essential water.

The Settlement does not address the need of low-income customers – with either large or small families -- for a reasonable allowance of water at a reasonable cost, and Cal Water's low-income subsidy is not designed to offset the increased cost of water to large families using water in the second or third tiers of the Settlement rates.

3. The Settlement does not serve the public interest –it does not follow ratemaking principles of the Commission.

[1] Att. 1, pp. 13 & 20
[2] Att. 1, pp. 21 & 28
[3] Att. 1, pp. 66 & 67
[4] Att. 1, pp. 94 & 95

The settlement fails to take into account basic policy considerations governing ratemaking.

- Customers in different districts are treated differently. In South San Francisco, customers have to pay a second tier rate to get water available to a customer in another district at first tier, reduced rates.
- Rates are not aligned with costs, and customers using more than an average amount of water are not being asked to cover the additional costs they are imposing on the water system in the future.
- Rate reductions and minimal rate increases between usage blocks will not promote conservation.
- No effort has been made to develop seasonal rates which charge people using water during peak periods with the cost that peak usage places on the system.

4. The Settlement is not consistent with the Commission's order (D.06-08-011) to implement rates where the revenue requirement has been fixed – Settlement rates will be implemented in districts where rate increases are imminent, creating confusion about conservation.

In D.06-08-011, the Commission directed Cal Water to file a new application that proposes an increasing block rate design for the eight districts at issue in that proceeding, not the remaining districts covered by a subsequently filed application to increase rates. If settlement rates were implemented only in the eight districts addressed by D.06-08-011, there would be no need to revise properly designed conservation rates to minimize the rate shock accomplished through pending GRC rate applications.

5. The Settlement is not reasonable in light of the whole record – rates are mechanistically set by formula, and do not reflect costs.

The Settlement superimposes a rate design on a method of cost allocation which does not take into account the changed usage patterns the rates will effect. Prices are not reflective of cost, but set by a formula which adjusts prices on either side of the existing rate to produce the authorized revenue allowance. The Settlement rates are not reasonable.

6. The Settlement is not reasonable in light of the whole record –the WRAM attempts to guarantee earnings.

The Settlement contains the same water rate adjustment mechanism which the Commission previously found "virtually guarantees that the utility would always receive the GRC-estimated sales revenues for the districts to which the WRAM would apply" (D.06-08-011 at 14) and which DRA condemned because "CalWater's application request for a permanent WRAM was not about facilitating conservation, but rather about moving toward a guaranteed recovery of revenues, and hence guaranteed earnings." (D.06-08-011 at 16)

7. A ready-to-wear Settlement is no substitute for a custom conservation rate.

Cal Water's 'ready to adopt and implement work product' does not include tiered rates for commercial and industrial customers, leaving the consumption of a significant bloc of customers with high usage unaddressed by the Settlement. The Settlement does not include a seasonal rate. The Settlement does not establish prices that reasonably reflect the cost that customers with high consumption patterns are imposing

on the system and on other customers, as well. The Settlement does not achieve the Commission's Water Plan objectives. It may include rates which are "ready ... to implement," but they are not conservation rates.

B. Ratemaking Requires Value Judgments and Rates Which Include An Adjustable Base Allowance, and Tiers Aligned With Costs, Are More Apt to Promote Conservation Than A Formula Applied Arbitrarily.

Cal Water's reference to Ms. Olea's testimony about studies of the American Water Works Association and the California Water Conservation Council does not support the proposition that tiered break points should be "based on consumption patterns unique to each district" as the Company argues. (CWS Br. at 5). At page 288, Ms. Olea cites those references as support for the proposition that "use of the average was a widely

accepted measure for the first-tier block." She also recognized other reliable studies are available through the CUWCC (Tr. 288), some of which support the use of 'budget rates' -- like the Peter Mayer Report jointly sponsored by the American Water Works Association and the City of San Diego. (Reference Item 1, Ex. N).[5] Individuals who are serious about water conservation are exploring different ways to design rates to find the design which best promotes the efficient use of water, not simply imposing a formula rate on everyone.

Cal Water offers seven reasons for rejecting budget based rates. None is persuasive:

a. *The Commission OII did not specify a value judgment on the appropriate level of water consumption."* (CWS Br. at 5, citing Ms. Olea's testimony at Tr. 269)

[5] At page 288, Ms. Olea stated she considered the list of resources listed on the CUWCC web site to be "very reliable."

The Commission did, however, specify a value judgment in the Water Action Plan. Objective No. 4 is to "Assist Low-Income Ratepayers." CFC's approach to setting the first tier rate incorporated this value:

> When price is used to ration water,14 as it is with increasing block rates, wealthy customers, who are the least price sensitive, will be able to absorb the higher prices, while poorer households will have to reduce usage. That poses less of a problem with respect to discretionary use of water (swimming pools, lawns, hot tubs), than it does with water use which is deemed essential (drinking, bathing, cooking). If the first tier is set too low, financially disadvantaged customers may have to cut back on essential uses of water. Most policy makers have agreed that some portion of water should be allocated to all members of society, regardless of their ability to pay for it.

(Ex. 19, at pp. 10-11). All parties appeared to agree with this principle. (Ex. 9, p. 16; Tr. at 57, Tr. 270, 405-06).

DRA's witness, as much as she might deny it, has made a value judgment, as well: "what we're discussing here are rate structures that … provide an economic incentive to cut consumption back from the point it is today to some not defined point as appropriate." (Tr. 268). She values conservation, as does CFC. The settling parties have elected to promote conservation with a formulaic rate. CFC proposed an alternative, an initial 'budget' rate with increasing tiers aligned with costs.

b. *Budget-based rates do not account for the variation in consumption patterns by district. The amended Settlement proposed rate design does not make a value judgment as to appropriate levels of consumption.* (CWS Br. at 6, citing Ms. Olea's testimony at Tr. 262 & Mr. Morse's testimony at pp. 355, 356)

1. Value judgments.

The amended Settlement proposed rate design <u>does</u> make value judgments. The settlement makes the same value judgment made by CFC, *i.e.,* that low-income customers should have access to an appropriate level of water. The settling parties

determined that an appropriate level was at "the midpoint between winter average and winter median consumption (this is the proxy for indoor water use). This ensures that consumers at low and average levels of consumption stay within Tier 1." (Amended Settlement at IV.4.b. & c.). CFC proposed that an 'appropriate' level was the level needed for basic indoor uses.

The Settlement makes another 'value judgment,' *i.e.*, that a rate higher than rates now in effect should be imposed only in districts where weather adjusted, average summer use is twice average winter use. (Amended Settlement at IV.4.b. & c and IV.4.d.; Tr. 410). CFC's witness suggested that usage in excess of average should be priced in a third tier, as suggested by Santa Rosa's consultant. (Tr. 527-28).

2. Variation in Consumption Patterns.

Cal Water incorrectly argues that budget rates do not account for the variation in consumption patterns by district. It is only the first tier which CFC recommended be established at the level needed for essential, indoor water use. Breakpoints for the second and third tier may be set based on a judgment which takes into account "weather, water production costs, household income and household size" and other factors unique to that district. (CWS Br. at 5). And the rate tiers can be priced at the cost of delivering water to that district, rather than using arbitrary formulae.

c. *Budget-based rates are a form of rationing rather than conservation rate design* (CWS Br. at 6, citing Ms. Olea's testimony at Tr. 269).

All conservation rate design is a form of rationing. There would be no need to "provide an economic incentive to cut consumption back," as DRA's witness suggested,[6] if the supply of water was infinite. The question to be addressed in this

[6] Olea, Tr. 268.

proceeding is not whether to ration water, but how to ration water, equitably. Creating an allowance of reasonably priced water for each customer, regardless of wealth, is equitable. Denying low-income customers some reasonably priced water because a calculated, but not vetted, average for the district is low (as in South San Francisco) is not equitable.

d. *A variation in rate blocks is needed to account for household size which varies significantly among Cal Water's service area.* (CWS Br, at 6, citing Mr. Morse's testimony at Tr. 355).

The Settlement's inclining block rate structure does not address the needs of low-income customers living in large households. As T.U.R.N.'s witness pointed out, under Settlement rates, "the more people in the house, the higher the bill is going to be." (Tr. 100). The budget rate structure, discussed by CFC's witness, does allow adjustments to rates to fit the size of the household served.

As Mr. Morse noted, the family of four is no longer the norm in California, where family size is "roughly about 2.93." (Tr. 355, 375). The size of the average family is relevant to fixing the breakpoint for the first tier of rates. CFC used a family of four, but could also have set the first breakpoint at the amount of water needed for a family of three -- 7.5 to 8.5 ccf, using Pacific Institute and EPA estimates.[7]

The advantage of budget rates is that the first tier break point can be set to fit the norm, but also can be adjusted to fit each customer's individual family size, whereas the same is not true of Settlement rates. For example, under the LADWP water rates, families obtain an extra allowance of water (4 hcf) per person in a family with more than 6 people. (Ex. 19, at Ex. P). LADWP requires customer verifications for the additional budget allowance, as Ms. Wodtke suspected (Tr. 547; LADWP Ordinance No. 170435,

[7] Ex. 19, Wodtke testimony at 10.

June 1, 1995),[8] which puts the burden on the customer, not the utility, to provide that information.

e. *Budget-based rates are contrary to the Commission's policy for setting base rates in energy, which includes a geographical factor.* (CWS Br. at 6, citing Mr. Morse's testimony at Tr. 356).

Cal Water provides no legal reference to support this statement. A review of Commission cases indicates that the Commission has taken into account differentials in energy use by climactic zone, rather than by geography, in setting baseline allowances. *See e.g., Pacific Gas & Electric Co.*, 1985 Cal. PUC LEXIS 1077 (Cal. PUC 1985). Climate would, concededly, affect the amount of electricity or gas used for heating and cooling. It does not affect, to the same degree, the amount of water used for essential, indoor uses.

As an interesting aside, Public Utilities Code section 739(a) requires the Commission to take into account, in setting a baseline quantity of gas and electricity, not only climactic zones but also seasonal variations. If one is to make an analogy to energy rates, it should be a complete analogy. Cal Water has not, however, proposed recognition of seasonal variations in the Settlement rates.

f. *Rate block break points for some districts would be greater than average summer consumption in the district. For example, using CFC's proposed 10 ccf as a first block rate point would be higher than the average summer consumption (9 ccf) in Cal Water's South San Francisco district.* (CWS Br. at 6, citing Mr. Morse's testimony at Tr. 357)

Winter and summer consumption in the South San Francisco are essentially the same. (Settlement Attachment, p.165). Setting the first break point within 1 ccf of summer consumption is, therefore, not unreasonable. "The purpose of conservation

[8] As Amended by Ordinance No. 171639 (July 28, 1997), Ordinance No. 173017 (Feb. 4, 2000), Ordinance No. 175964 (June 20, 2004) and Ordinance No. 177968 (Nov. 27, 2006).

rates is to discourage discretionary consumption, like landscaping, watering your rose bushes, et cetera, not to discourage people from washing their hands or cooking." (Tr. 560). Cal Water, on the other hand, should be required to explain why it makes sense to charge customers in South San Francisco a second tier rate at 6 ccf, while other customers (Palos Verdes) continue to be billed at the first tier rate until usage reaches 16 ccf. (Ex. 19, Wodtke testimony at 9; Settlement Att. at 37).

g. *Budget based rates would require additional information, such as the number of occupants in each house and the size of the house. This information is not available.* (CWS Br. at 6, citing Ms. Olea's testimony at 280, 281)

Ms. Olea testified that "information … such as how many people live in a house, the size of the house and so forth … was not available in these settlements. (Tr. 281). That is not the same as saying the information is not available, at all. As discussed previously, customers who reside with large families and see an economic advantage to telling Cal Water they need more water than a family of four (or three), will presumably be willing to provide Cal Water with verification of their family's size. Information will be made available to Cal Water where there is an incentive to provide that information, by families who are willing to sacrifice privacy for a reasonable allowance of water. (CWS Br. at 15).

C. Rates Which Increase With Usage Do Not Address Seasonal Peak Costs.

Cal Water claims that customers will receive price signals based on seasonality, under settlement rates. "For example, in Bakersfield," it says, "Customers with average monthly consumption of 33 ccf/month or less will receive lower winter bills, but an increase in the summer months…." (CWS Br. at p. 4, quoting Mr. Morse's testimony).

Mr. Morse's testimony has been taken out of context. What he was explaining was the "challenge in designing rates" in accordance with his formula: "[i]n order to charge a higher rate (e.g. tier 3) for higher levels of consumption, a discount must be given to many customers who have low levels of consumption. This is necessary to assure that new rates collect the same level of revenues as the existing single quantity rates." (Ex. 17, Morse Testimony at 40).[9]

Cal Water's rates do not reflect 'seasonality;' the rates reflect higher rates for higher levels of consumption. Seasonal rates would impose higher charges during peak periods, regardless of the level of consumption.

D. The Experience of Municipalities Charging Conservation Rates Should Not Be Ignored.

Cal Water provides a number of reasons why it is "not appropriate" to make a "direct comparison" between rates of municipalities and investor-owned utilities. CFC disagrees. It is useful to examine rates created by other entities with more experience in encouraging conservation, to avoid re-inventing the wheel.

Ms. Wodtke explained the reasons for her investigation of municipal water utility rates:

> Another way to test the likelihood that settlement rates will actually encourage conservation would be to look at rates that municipal utilities in California have placed in effect to determine where they have elected to break rate blocks and what amount of differential between rate blocks have been determined to be effective. Municipal utilities have had conservation rates in effect since the early 1990's and, thus, have tested the effectiveness and acceptability of different price levels.

(Ex. 19, Wodtke Testimony at 18-19; Tr. 470-71).

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[9] Mr. Morse was discussing the seven-step process Cal Water claims Ms. Wodtke did not understand. (CWS Br. at 16; Ex. 17, Morse Testimony at 36-37).

None of the statements offered by Cal Water to dispute the comparability of municipal rates detracts from this points.

a. *Municipal cost structures are different than privately owned water utilities.* (CWS Br. at 6, citing Ms. Olea's testimony at pages 256-257)

At pages 256 and 257 of the transcript, Ms. Olea identified two major differences between investor owned utilities and municipal utilities, both of which relate to cost of capital of the entity:

> What's most noticeable is is that investor owned utilities have as part of the rate structure ROE, which is compensation to the company, to the owners of the company for providing the regulated service, in this case water, whereas a public utility does not have that.
>
> The other major difference in the cost structures of investor owned and publicly owned utilities that I would like to point out is that water is very capital intensive. You need to borrow lots of money over very long periods of time to maintain a very intensive system. And privately owned utilities traditionally do that with private activities bonds, and municipally owned utilities or some form of bank financing or contribution from their owners. And municipally owned utilities, because they are essentially government-issued tax-exempt bonds, revenue bonds, and cost of carrying debt as a government versus as a private entity is significantly different.

(Tr. 256-57).

Ms. Olea was adamant, however, that both municipal and privately owned water utilities are subject to rigorous cost of service ratemaking. (Tr. 300). She described the functional allocation of costs undertaken by municipal utilities, so that "cost to customer classes [is] based on the estimated demand they put on the system using engineering estimates," and then proving the "actual cost of service." (Tr. 301) This is a good model for privately owned water utilities, and is already used in the electric and gas industry.

b. *CFC's municipal rate information does not include all relevant rates, e.g. service charges and actual rates."* (CWS Br. at 6, citing Ms. Olea's testimony at 279, 280)

Ms. Olea may not be faulted for failing to comprehend the legal requirements concerning proof, but Cal Water's lawyer can. Ms. Olea testified at pages 279 and 280 that "to compare rate structures, one would want to consider several -- several things, not just the rate that you see on the schedule but the size of the utility, where it is, its cost-to-debt structure, a number of other elements." Assuming that was the basis for the settling parties' objection to examining municipal rates, it was then up to the parties sponsoring the settlement to demonstrate that the comparisons Ms. Wodtke offered were unreasonable, by offering some evidence about the elements which Ms. Olea considered relevant to support Ms. Olea's opinion. *Application of Pacific Gas & Electric Co.,* D.07-03-044, 2007 Cal. PUC LEXIS 173, *17, *quoting* D.02-01-041, *mimeo.,* p. 13. As the record now stands, the evidence presented by Ms. Wodtke remains unrebutted.

c. *The Amended Settlement's initial proposal, which changes rates from a single quantity block rate to increasing block rates is not comparable to CFC's examples of municipal water utility rates that have been refined over many years.*

This proposition is offered without support. No utility witness testified that the privately owned utilities could not build on the experience of municipal utilities. Rather, their suggestion that the utilities should proceed cautiously to test the waters was raised through questioning of CFC's witness. (Tr. 548-49) And her testimony was that inclining block rates have already been tested. "[T]he effects are known or could be known through study. And, in fact, there are a number of studies out there of how effective they are at reducing consumption, what type of structure actually has an effect on consumption. So that in this proceeding, water utilities should be able to ascertain

how inclining-block-rate structures will work." (Tr. 471). There is no persuasive evidence showing the Commission must start from scratch.

d. *The Amended Settlement proposal is a trial proposal; the rate design will be modified over time to incorporate lessons learned and refinements.* (CWS Br. at 7, citing Mr. Morse's testimony at Tr. 507)

The promise to refine a defective proposal does not make the proposal reasonable. It is preferable to start out with a good rate design, and make that design even better over time.

e. *Many of Cal Water's districts include unmetered customers that will experience metered rates and increasing block rates when converted to meters. CFC's municipal water utility information does not indicate if any of the rates include areas where customers would be converted to metered service.* (CWS Br. at 7, citing Ms. Olea's testimony at Tr. 278)

It is not at all clear why the number of customers metered by a municipality is relevant to a discussion of the comparability of municipal rates. Ms. Olea's testimony does not suggest it is relevant. Ms. Olea mentioned, at page 278 of the transcript, that the parties "consider[ed] what is going to happen to meet -- to customers on flat-rate schedules." (Tr. 278) She said nothing about municipal utilities.

f. *The CFC's examples of a few municipal water utility increasing rates are not illustrative of municipal rates. Thus the illustration does not provide the Commission with a useful reference of current municipal water utility rate design.* (CWS Br. at 7, citing Ms. Wodtke's testimony at Tr. 530)

Ms. Wodtke did not claim that she was presenting a representative sample of municipal rates. She claimed only that the municipal water utility rate structures she referenced in her testimony were ones found on the internet. (Ex. 19 at p. 18). It should be noted that Cal Water had an opportunity to present additional evidence of municipal water rates to counteract any inference that might be drawn from Ms. Wodtke's testimony, but failed to take advantage of that opportunity.

Ms. Wodtke discovered some common threads among municipal utilities' conservation rates which may be used as a standard against which settlement rates may be tested:

> [N]early all of the municipalities have chosen to increase rates from Tier 1 to Tier 2 at a lower level of consumption than Suburban (20 ccf). None of the municipalities' first tier rates include more than 20 ccf, and for many, the usage break is well below 20 ccf.
>
> All the municipal rates share one thing in common …. The differential in municipal rates is generally much higher than proposed in the settlements. The small price increases at the break point between first and second tier rates in the settlement rates is unlikely to encourage conservation.

(Ex. 19, Wodtke testimony at 18-19).

Cal Water has admittedly selected a first tier break point which is lower than Suburban. But the price differential between rate tiers is quite small. – generally, about 5 percent from Tier 1 to Tier 2. "Low prices at the margin are an impediment to conservation – if there is little money to be saved, this undercuts the case for changing one's behavior." (Ex. 19 at 19-20, citing Hanneman (Ex. M of Ex. 19) at 5-15)

E. Non-Residential Customers Will See Large Reductions in Their Bills, Which Will Not Stimulate Conservation Efforts.

The Settlement Rates will not promote conservation by non-residential customers, as Cal Water claims. (CWS Br. at 7-8). The Amended Settlement shows the impact of reduced service charges on non-residential customers' bills, in charts included in the Attachment to the Settlement. Most non-residential bills will increase by no more than 3% to 5%, whereas reductions in non-residential bills may be as much as 47.6%.[10] Cal Water's proposed rates for non-residential customers are <u>not</u>

[10] The greatest bill reductions (-) and highest bill increases (+) in each district are: Bakersfield: -12.9% to +3.8% (p. 20); East L.A.: -17.7% to +3.1% (p.28); Los Altos: -10% to +3% (p. 36); Palos Verdes: -10% to +2% (p. 44); Salinas: -17.5% to +5.3% (p. 52); Stockton: -12.1% to +8.5% (p. 60); Chico:

conservation rates. (CWS Br. at 7) The Settlement fails to create any financial incentive for conservation for the 20 to 30 percent of Cal Water's customers who are non-residential. (CFC Br. at 5).

F. Cal Water Did Not Justify the WRAM Proposed in this Proceeding, and There Is No Proof Environmental Groups Have Endorsed It.

Cal Water has not demonstrated that there is a need to decouple sales from revenues. There is no evidence that Cal Water will benefit from increased sales, i.e., that the cost of producing more water will not offset any revenue to be made from selling more water. There is, therefore, no evidence that Cal Water has a 'current financial disincentive to water conservation,' and consequently, no evidence of the need to implement a decoupling mechanism. (CWS Br. at 8; CFC Br. at 29)

Cal Water suggests the WRAM proposed in this proceeding is supported by environmental organizations, as well as utilities. (CWS Br. at 9). The letter attached to Mr. Morse's testimony (Ex. A of Ex. 17) indicates some environmental organizations endorsed "a WRAM." The letter does not indicate whether the WRAM they endorsed was a Monterey-style WRAM or the WRAM proposed in this proceeding. The 2005 report to the legislature and governor mentioned in Cal Water's Brief (CWS Br. at 9) is not part of the record nor is the report, as referenced in the footnote, easily found on the CUWCC website.

-8.1% to +5.6% (p. 67); Marysville: -6.5% to +4.4% (p. 74); Oroville: -12.5% to +6.7% p. 81); Selma: -13.6% to +4.5% (p. 88); Visalia: -7.7% to +3.4% (p. 95); Willows: -7.5% to +4.1% (p. 102); Antelope-Lancaster/Leona: -2.3% to 12.1% (pp. 110, 117); Dixon: -8.5% to 4.7% (p. 124); Dominguez: -9.2% to +1.3% (p. 131); Hermosa: -5.4% to 4.2% (p. 139); King City: -47.6% to +3.2% (p. 145); Livermore: -22.1% to +2% (p. 152); Mid-Peninsula: -6.9% to +2.2% (p. 159); So. S.F.: -9.1% to +4.6% (p. 167); Westlake: -11% to +2.4%. (p. 174)

CFC will not repeat, here, arguments presented in its initial brief which show Cal Water's WRAM is not symmetrical, does not remove the incentive to sell water, and does nothing to encourage conservation. (CFC Br. at Sec. V, pp. 28 *et seq.*)

G. CFC Recommendations Withstand the Criticism of Cal Water.

Cal Water offers a response to several recommendations made by Ms. Wodtke during her cross-examination, none of which has merit.

a. & b. Ms. Wodtke recommended that the Commission resolve certain policy issues before implementing conservation rates. Cal Water does not disagree; it says "policy recommendations are included as part of the Amended Settlement.". (CWS Br. at 13) What Cal Water is really responding to is Ms. Wodtke's testimony that "the settlements were not clear on what policy objectives had been taken into account and how they hoped to achieve them. So that I filed testimony to try to raise some of these policy considerations." (Tr. 538).

Cal Water disputes this testimony, but Mr. Morse was unable to point to any part of the Settlement where policy issues were discussed. (Tr. 368-73).

c. Ms. Wodtke recommended that "the first tier rate be established at a level which allows a minimal amount of water, whatever is needed for basic needs, so that low-income people can afford water and so that the amount of subsidy that other customers are required to provide to low-income customers is minimized." (Tr. 544) Cal Water's witness originally agreed with this recommendation. (Ex. 17 at 35). Now it argues in favor of a "subsidy paid by other customers." (CWS Br. at 14). As the Commission has previously recognized, subsidies are to be avoided. *Investigation of*

Tariffs filed by California Water Service Company (Advice Letter No. 1240), 1993 Cal. PUC LEXIS 347, *13 (Cal. PUC 1993).

d. Cal Water responds to Ms. Wodtke's recommendation that conservation rates should provide customers with "a significant price signal that they'll notice" (Tr. 545), by stating that the 20% price differential between tiers which it proposed "is significant." (CWS Br. at 14). Mr. Morse seems to have disagreed, stating "[t]here are general rate cases that have larger than 20-percent increases. " (Tr. 428).

e. Cal Water challenges Ms. Wodtke's recommendation "[t]hat the Commission take into account the fairness of imposing an inclining block rate structure on some customers and not others so that residential customers are not unfairly burdened with the efforts to promote conservation," by claiming reduced service charges constitute a 'conservation rate'. As noted earlier, in Section "E", the slight increase in non-residential bills (3 to 5%) is hardly likely to encourage conservation and the large reductions in non-residential bills are likely to have the reverse effect.

f. Cal Water claims that under its existing resource acquisition policy, there is no need to encourage it to minimize costs, as Ms. Wodtke recommended (Tr. 545). Yet when Mr. Morse was asked if he could state Cal Water's marginal costs, he said, "I don't know what they would be." (Tr. 396). Perhaps that is why Cal Water simply says its costs are reviewed in its GRC, rather than providing assurances that it has done all that is necessary to minimize costs. The Commission does not "dictate[] to investor-owned utilities what method of obtaining water must be used to meet its present and future responsibility of providing safe and adequate supply of water at reasonable

rates." *Sierra Club v. Valencia Water Co.*, 1999 Cal. PUC LEXIS 199, * 8 (Cal. PUC 1999). Thus, Cal Water's filing of a water management plan signifies little.

g. Cal Water disputes Ms. Wodtke's comment that indoor water use does not change much with weather, or geography, but is able to come up with only one variant, household size, to disprove her claim. It then claims settlement rates better address household size, than a budget rate. As discussed previous (Section "B.d."), Cal Water is wrong.

H. CFC Had No Burden To Put Forward An Alternative to Settlement Rates.

Cal Water faults CFC for failing to provide the Commission "with a proposal comparable to the Amended Settlement proposal." (CWS Br. at 13). The argument is premised on a misunderstanding of the utility's burden of proof. Cal Water bears the burden of proving that the settlement rates are reasonable. Pub. Util. Code § 454; *Application of Southern California Water Company*, 1999 Cal. PUC LEXIS 192, *33-34 (Cal. PUC 1999). Cal Water also bears the associated burden of producing evidence which would support such a finding. Evid. Code § 550(b). CFC had no obligation to present any evidence until Cal Water had "produce[d] evidence of such weight that a determination in [its] favor would necessarily be required in the absence of contradictory evidence." 1 Witkin Cal. Evid. Burden §§ 4, 7.

But CFC did come forward with evidence tending to show that the settlement rates were <u>not</u> reasonable, that the proposed rates would not provide customers with price signals sufficient to cause conservation of water. And the evidence offered by CFC must be taken into account when the Commission determines whether Cal Water met its burden of proof.

Under a preponderance of the evidence test, the Commission would have to determine that the utility has supplied "such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." 1 Witkin Cal. Evid. Burden § 35 (*emphasis added*). But the Commission has imposed a higher burden. Even after entering into a settlement with some parties, a utility continues to have the "sole obligation to provide a convincing and sufficient showing to meet the burden of proof." *Application of San Diego Gas & Elec.*, 2005 Cal. PUC LEXIS 522, *8-9 (2005). The phrase 'clear and convincing' "has been defined as "clear, explicit and unequivocal," "so clear as to leave no substantial doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind." … Otherwise stated, a preponderance calls for probability, while clear and convincing proof demands a *high probability.* 1 Witkin Cal. Evid. Burden § 38, *citation omitted*. Cal Water has not offered sufficient evidence to inspire unhesitating agreement that the conservation rates it has proposed are reasonable.

CFC has, therefore, asked the Commission to "[p]ostpone implementation of conservation rates until after:

- Each water utility develops a cost allocation study, reviewed in a general rate case, to ensure all customer classes are treated equitably when conservation rates are placed in effect.
- Each water utility develops conservation rates for all customer classes with the potential to reduce usage
- Each water utility develops cost information which appropriately align increasing block rates with the utility's costs.

I. CFC's Witness Has The Special Knowledge Necessary to Assist the Trier of Fact.

Cal Water states, overbroadly, that the Commission "should not rely on CFC's testimony, comments, or briefs to reject or modify the amended Settlement." (CWS Br. at 11). Cal Water resurrects the argument made by CWA and others at hearing that CFC's witness was not qualified to offer an opinion as an expert. (Tr. 310 *et seq.*). Her testimony was, however, admitted into evidence over the CWA's objection. (Tr. 333-34) The Judge's ruling was correct.

> Under California Evidence Code section 720:
>
> (a) A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.
>
> (b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.

Clearly Ms. Wodtke is qualified to testify as an expert on public utility rates. As shown by the resume filed with her testimony, she has special knowledge, skill, experience and training acquired through practice in the field for nearly 30 years, longer than any other witness offering expert opinion, with the exception of Mr. Kelly.[11] She managed her office's presentations in gas, electric and telephone utility rate and service cases, working with consultants, expert witnesses and staff people in the presentation and cross-examination of expert testimony. (Ex. 19, Resume; Tr. 314, 327). This certainly qualifies as training in economics, accounting and engineering, notwithstanding Cal

[11] Mr. Kelly has 30 years of experience in the field. (Tr. at 7). Mr. Morse states that he began working for DRA in 1985. (Ex. 17, Sec. 4). Mr. Jackson states he began working for the CPUC in 1990. (Ex. 9, p. 2). Ms. Olea began working for Bartle Wells Associates in 2004.

Water's assertions to the contrary. (CWS Br. at 11). She has practiced before this Commission and the F.E.R.C. and has participated in proceedings of the California Independent System Operator, and has appeared in California court proceedings. (Ex. 19, Resume). Her experience is broader than that of other expert witnesses, providing a greater perspective on key issues.

Ms. Wodtke has "special knowledge, skill, experience and training" on the subject of public utility ratemaking. Further, she is qualified to offer an expert opinion under Evidence Code section 801:

> If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:
>
> (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and
>
> (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

Her opinion, based on her special knowledge, skill experience and training, and informed by studies that she examined (Tr. 315, 327), is "sufficiently beyond common experience … [to] assist the trier of fact."

J. CFC Understands the Settlement Proposal and Disagrees With It.

Cal Water attacks the party opposing the Settlement, claiming an outsider can not cope with the intricacies of document. Resort to an *in personam* attack, like this one, is normally made only when one cannot justify a proposal on the merits.

1. No Witness Offered A Plan for Transition to Conservation Rates.

Cal Water faults Ms. Wodtke for failing to "read anything on 'how to transition from a single block rate to a multiple block rate.'" (CWS Br. at 11-12). If that criterion is used to judge witnesses' expertise, all witnesses would fail the test. No witness presented any testimony on that issue.

Cal Water misrepresents the manner in which the settling parties took rate impacts into account. Nothing in the parties' settlement or the utilities' testimony indicates a concern about easing customers into conservation rates. Rather, as Ms. Olea testified, DRA was particularly concerned about decisions the Commission might make during the pendency of this proceeding which would significantly change Cal Water's revenue requirement in some districts. (Tr. 513). The settling parties response was to limit the increase from second to third tier to 20 percent. (Tr. 513). As CFC argued on brief, however, it makes more sense to delay implementation of Cal Water's conservation rates until the magnitude of the rate increase is known. (CFC Br. at 14). The rate shock of an increase of 30 to 50 percent in some water districts[12] -- an increase Cal Water apparently proposed without trepidation or concern about rate shock -- may be enough to cause customers to conserve water.

2. Cal Water Offers No Viable Basis For Disqualifying CFC's Witness.

Cal Water had to search hard to find examples of Ms. Wodtke's lack of expertise. As demonstrated below, the search proved unsuccessful.

a. *"Ms. Wodtke did not understand the difference between BMP 11 and Commission water rate design policy." (CWS Br. at 16, citing Tr. at 480*)

[12] Ex. 19, Wodtke testimony at 18, n. 15.

The following testimony demonstrates Ms. Wodtke had a clear understanding of the difference:[13]

> Q Did you know that the present rate design policy favors recovering 50 percent of a utility's fixed cost through volumetric charges?
>
> A As I understand it, that is the policy. And the Commission is encouraging utilities to move towards the CUWCC standard of a 30 percent fixed cost in the service charge and the remainder in volumetric rates.

b. *"Ms. Wodtke did not understand that the Suburban Water WRAM was different than other WRAM proposals." (CWS Br. at 16, citing Tr. at 485)*

At page 485 of the transcript, cited by Cal Water, Ms. Wodtke admitted that at the time she wrote Comments, she did not understand the Suburban WRAM. She was not the only person confused; and Mr. Morse wasn't too clear about differences between the Park Water and Cal Water WRAMs. (Tr. 83-84; 431). At the time of hearing, Ms. Wodtke was clear on the concept, and withdrew the previous objection to the Suburban WRAM, while continuing to object to the Cal Water and Park Water WRAMs. (Tr. 485-86).

c. *"Ms. Wodtke, incorrectly states that the Cal Water WRAM proposal 'is calculated by multiplying the billed consumption times the authorized rate for adopted.'" (CWS Br. at 16, citing Tr. 551 & 552).*

In fact, Ms. Wodtke was talking about the "quantity charge revenue," not the WRAM (Tr. 552-53), and her statement is very similar to one made by Mr. Morse. (Tr. 433)

d. "*Ms. Wodtke thought that Cal Water proposed five inclining rate blocks; apparently, she confused Cal Water's documentation of five steps to implement rate design criteria with Cal Water's proposed rate blocks." (CWS Br. at 16, citing Tr. 411)*

[13] At p. 480, referenced by Cal Water, Ms. Wodtke was asked about Golden State's request to have statewide rates.

Cal Water fails to understand its own seven-step process for pricing rate blocks (Ex. 17, at p. 36; Section IV.3.c. at p. 4), calling it a five-step process (CWS Br. at 16). It was not CFC's witness, but CFC's attorney, who asked Mr. Morse to clarify this point. (Tr. 411).

e. *"Ms. Wodtke did not understand the ratemaking workings of an interest bearing balancing account." (CWS Br. at 16, citing Tr. 440-45)*

It is odd that Cal Water would suggest questioning by CFC's attorney showed a lack of knowledge on Ms. Wodtke's part about the way interest is accrued in a balancing account. (CWS Br. at 16) CFC's attorney is cross-examining Mr. Morse, at the pages of the transcript cited by Cal Water, about how interest would be recorded on the combined balancing accounts. As demonstrated by the testimony of Mr. Morse, interest in the balancing account works only one way – against consumers, and that point was grasped by Ms. Olea, who changed the subject. (Tr. 442). Ms. Wodtke clearly understood how an interest bearing balancing account works.

f. "*In the CFC's separate comments …., CFC referenced Commission decision D.04-07-022 [which] '… has nothing to do with the WRAM mechanism proposed in the Settlement or the Electric Revenue Adjustment Mechanism (ERAM) instituted for energy utilities.'" (CWS Br. at 16, quoting Reply Comments of Park Water Company)*

Cal Water relies on Reply Comments of Park Water to claim Ms. Wodtke doesn't know about adjustment mechanisms. Since both Park Water and Cal Water have an interest in winning approval of the same WRAM mechanism, this is hardly objective evidence of Ms. Wodtke's qualifications, or lack thereof. At any rate, it was not Ms. Wodtke's testimony that Park Water was addressing, but comments of the CFC. And

CFC correctly compared the mechanism discussed in the SCE case with the WRAM at issue. (CFC Comments at 9).

The Commission's discussion, in the SCE case, of a revenue balancing account, like the WRAM at issue here, along with other post-test year adjustments is very relevant in this case:

> Whether called attrition or known by some other name, proposals such as SCE's PTYR mechanism have been approved in energy utility rate proceedings on several occasions over the past 20 years, but not invariably so. Attrition allowances for non-test years, and by extension SCE's PTYR proposal, are neither automatically granted nor are they entitlements. They are not intended to insulate utilities from economic pressures that all businesses experience.
>
> We start with the proposition that a utility's opportunity to earn a fair return on the investments made to provide adequate utility service is realized with the adoption of a just and reasonable forecast test year revenue requirement. Then, to judge whether post-test year revenue adjustment provisions are appropriate, we inquire into whether there are, or will be, conditions that might undermine a utility's opportunity to earn its authorized rate of return after the test year. Such conditions need not be limited to those encountered 20 years ago, when the [*395] Commission was approving attrition adjustments because of high costs of utility debt and because the economy was unpredictable and volatile. Interest rates may be lower and the economy may be more stable now, but that does not mean there can be no other conditions that impact the utility's ability to earn a reasonable return.
>
> With a revenue balancing account, variations between recorded revenues and the utility's authorized revenue requirement are tracked for subsequent recovery from, or refund to, ratepayers. Any additional revenues beyond the authorized revenue requirement that result from customer growth or increased usage per customer are returned to customers as a rate decrease. They are not available to offset any cost increases. SCE contends that in order for it to have a fair opportunity to earn its authorized return on equity, we should provide for an increase in the authorized annual revenue requirement so it can recover cost increases caused by customer growth, the need to replace aging infrastructure facilities, and the impact of price inflation on operating expenses.

> Regarding the impact of a revenue balancing account, SCE paints only a partial picture by failing to note that the account protects it against any revenue shortfalls that might otherwise occur if usage declines. …
>
> The rationale for approving non-test year revenue requirement adjustments is greater in this GRC than we have encountered in recent proceedings where we denied such mechanisms. SCE's financial condition was devastated by the events of 2000 and 2001, and it only narrowly avoided bankruptcy. While SCE's earnings have improved since the worst of the energy crisis in 2000 and early 2001, SCE is still working to regain full creditworthiness, an objective that no party opposes and one that this Commission has repeatedly endorsed. This weighs strongly in favor of adopting a revenue requirement adjustment mechanism for this GRC cycle for both 2004 and 2005.

Application of SCE, 2004 Cal. PUC Lexis 325, *394-96 (July 16, 2004)(*emphasis added*). As stated in CFC's Comments, CalWater has demonstrated no similar financial circumstances justifying a WRAM. According to Cal Water's 2006 Annual Report to shareholders: "The total return on your investment in California Water Service Group increased nearly 9% in 2006, as annual dividends increased for the 39th consecutive year to $1.15 per share (at a yield of approximately 3%)."[14]

Both CFC and its witness clearly understand why Cal Water is interested in approval of its WRAM, even to the point of threatening it will not implement conservation rates if the WRAM is not approved. (Ex. 17 at pp. 7:10, 34:4; Tr. 430). Public interest must be placed before profit, however, particularly where there has been no showing that the WRAM Cal Water proposes is necessary.

> Twice before water adjustment mechanisms have been considered by the Commission, and twice rejected. …. 'Our experience suggests that efforts to reduce costs are less intense if a utility can simply raise rates to reach any shortfall in sales revenue.'

[14] http://media.corporate-ir.net/media_files/irol/10/108851/2006AR/pages/10-results.html

(Reference Item 1, Ex. G, Letter from Southwest Water Company Utility Group to the Commission, at 3).

III. CONCLUSION

Cal Water is unable to justify acceptance of the formulaic, 'ready-to-wear' settlement rates it sponsors. The settlement rates are discriminatory, and are not aligned with the costs of providing service to customers. Cal Water's attacks on ratemaking proposals of CFC and its witness lack substance. CFC asks the Commission to follow the recommendations made in its Opening Brief.

Dated: August 27, 2007

Respectfully submitted,

CONSUMER FEDERATION OF CALIFORNIA

By: _____//s//_____

Alexis K. Wodtke
520 S. El Camino Real, Suite 340
San Mateo, CA 94402
Phone: (650) 375-7847
Fax: (650) 343-1238
Email: lex@consumercal.org

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.	Investigation 07-01-022 (Filed January 11, 2007)
In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.	Application 06-09-006 (Filed September 6, 2006)
Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates	Application 06-10-026 (Filed October 23, 2006
Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.	Application 06-11-009 (Filed November 20, 2006)
Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.	Application 06-11-010 (Filed November 22, 2006)
Application of San Jose Water Company (U 168 W) for an Order Approving its Proposal to Implement the Objectives of the Water Action Plan	Application 07-03-019 (Filed March 19, 2007)

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2007, I served by e-mail all parties on the service lists for I.07-01-022, A.06-09-006 A.06-10-026, A.06-11-009, A.06-11-010, & A.07-03-019 for which an email address was known, true copies of the original of the following document which is attached hereto:

REPLY BRIEF OF
THE CONSUMER FEDERATION OF CALIFORNIA

The names and e-mail addresses of parties served are shown on an attachment.

The aforementioned document was served on Michael Whitehead, San Gabriel Valley Water Company, PO BOX 6010, El Monte, CA 91734, by causing the Notice, enclosed

in an envelope addressed to him and with postage prepaid, to be deposited in the U.S. Mail.

Dated: September 17, 2007

Respectfully submitted,

CONSUMER FEDERATION OF CALIFORNIA

By: _____//s//_____
Alexis K. Wodtke

520 S. El Camino Real, Suite 340
San Mateo, CA 94402
Phone: (650) 375-7847
Fax: (650) 343-1238
Email: lex@consumercal.org

Service List of I.07-01-022, A.06-09-006, A.06-10-026, A.06-11-009, A.06-11-010, A.07-03-019:

CHARLIE	HARAK	charak@nclc.org
JEAN L.	KIDDOO	jlkiddoo@swidlaw.com
OLIVIA B.	WEIN	owein@nclcdc.org
FRED G.	YANNEY	fyanney@fulbright.com
EDWARD N.	JACKSON	ed@parkwater.com
LEIGH K.	JORDAN	leigh@parkwater.com
ROBERT J.	DIPRIMIO	rdiprimio@valencia.com
ROBERT	KELLY	bobkelly@bobkelly.com
DANIEL A.	DELL'OSA	dadellosa@sgvwater.com
MICHAEL L.	WHITEHEAD	
TIMOTHY J.	RYAN	tjryan@sgvwater.com
KEITH	SWITZER	kswitzer@gswater.com
RONALD	MOORE	rkmoore@gswater.com
KENDALL H.	MACVEY	Kendall.MacVey@BBKlaw.com
CHRISTINE	MAILLOUX	cmailloux@turn.org
JACK	HAWKS	jhawks_cwa@comcast.net
NINA	SUETAKE	nsuetake@turn.org
Marcelo	Poirier	mpo@cpuc.ca.gov
Maria L.	Bondonno	bon@cpuc.ca.gov
Monica L.	McCrary	mlm@cpuc.ca.gov
Natalie	Wales	ndw@cpuc.ca.gov
ENRIQUE	GALLARDO	enriqueg@lif.org
JOSE E.	GUZMAN, JR.	jguzman@nossaman.com
LENARD G.	WEISS	lweiss@steefel.com
LORI ANNA	DOLQUEIST	Ldolqueist@steefel.com
MARTIN A.	MATTES	mmattes@nossaman.com
DAVID M.	MARQUEZ	dmmarquez@steefel.com
ALEXIS K.	WODTKE	lex@consumercal.org
MELISSA W.	KASNITZ	pucservice@dralegal.org
DAVID P.	STEPHENSON	dstephen@amwater.com
FRANCIS S.	FERRARO	sferraro@calwater.com
LYNNE P.	MCGHEE	lmcghee@calwater.com
BETTY R.	ROEDER	broeder@greatoakswater.com
PALLE	JENSEN	palle_jensen@sjwater.com
BILL	MARCUS	bill@jbsenergy.com
JEFFREY	NAHIGIAN	jeff@jbsenergy.com
DARLENE M.	CLARK, ESQ.	darlene.clark@amwater.com
DANIELLE C.	BURT	danielle.burt@bingham.com
JOHN	GREIVE	john.greive@lightyear.net
MARY	CEGELSKI	mcegelski@firstcomm.com
CHARLES	FORST	charles.forst@360.net
DAVID A.	EBERSHOFF	debershoff@fulbright.com
DOUGLAS K.	MARTINET	doug@parkwater.com
DONALD R.	WARD	luhintz2@verizon.net
MARCEL	HAWIGER	marcel@turn.org
Regina	DeAngelis	rmd@cpuc.ca.gov
DEBBIE	DAVIS	debbie@ejcw.org

DAVID	MORSE	demorse@omsoft.com
MATT	VANDER SLUIS	mvander@pcl.org
Bertram D.	Patrick	bdp@cpuc.ca.gov
Diana	Brooks	dsb@cpuc.ca.gov
Edward	Howard	trh@cpuc.ca.gov
Fred L.	Curry	flc@cpuc.ca.gov
Jaeyeon	Park	jcp@cpuc.ca.gov
Janice L.	Grau	jlg@cpuc.ca.gov
Joyce	Steingass	jws@cpuc.ca.gov
Kenneth	Bruno	kab@cpuc.ca.gov
Laura L.	Krannawitter	llk@cpuc.ca.gov
Patrick	Hoglund	phh@cpuc.ca.gov
Sean	Wilson	smw@cpuc.ca.gov
Tatiana	Olea	tfo@cpuc.ca.gov
B. TILDEN	KIM	tkim@rwglaw.com
TIMOTHY S.	GUSTER	tguster@greatoakswater.com

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